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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CUNG LE, et al.,)	
)	
Plaintiffs,)	Case No. 2:15-cv-01045-RFB-PAL
)	
vs.)	Las Vegas, Nevada
)	January 26, 2016
ZUFFA, LLC, d/b/a Ultimate)	
Fighting Championship and)	
UFC,)	STATUS CONFERENCE
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS
THE HONORABLE PEGGY A. LEEN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: See Next Page

DIGITALLY RECORDED: Liberty Court Recorder (LCR)
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1 LAS VEGAS, NEVADA; TUESDAY, JANUARY 26, 2016; 1:47:11 P.M.

2 --oOo--

3 P R O C E E D I N G S

4 THE COURT: Good afternoon. Please be seated.

5 MR. WILLIAMS: Good afternoon.

6 MR. SPRINGMEYER: Good afternoon.

7 COURTROOM ADMINISTRATOR: Your Honor, we are now
8 calling the status conference in the matter of Le versus Zuffa,
9 LLC. The Case Number is 2:15-cv-1045-RFB-PAL.

10 Beginning with plaintiff's counsel, counsel, please
11 state your names for the record.

12 MR. SPRINGMEYER: Good afternoon, Your Honor. Don
13 Springmeyer from Wolf Rifkin.

14 MR. SAVERI: Good afternoon, Your Honor. Joseph Saveri
15 from San Francisco, California.

16 MR. DELL'ANGELO: Good afternoon, Your Honor. Michael
17 Dell'Angelo from Berger & Montague.

18 MR. ELWELL: Good afternoon, Your Honor. Joel Elwell
19 from Warner Angle.

20 MR. COVE: Good afternoon, Your Honor. John Cove,
21 Boies Schiller for Zuffa, LLC.

22 MR. WILLIAMS: Good afternoon, Judge Leen. Colby
23 Williams, Campbell and Williams, on behalf of Defendant Zuffa,
24 LLC.

25 MS. LYNCH: Good afternoon, Your Honor. Marcy Lynch

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1 from Boies Schiller & Flexner on behalf of Zuffa, LLC.

2 MR. HENDRICK: Good afternoon, Your Honor. Kirk
3 Hendrick, Chief Legal Officer for Zuffa, LLC.

4 THE COURT: This is the time set for the status
5 conference in this matter. The parties have submitted a
6 59-paged joint status report with attached exhibits. I have
7 read all of your materials. We have a lot of ground to cover.

8 So let's start off first with an update from the
9 defendant concerning the discovery progress. Your report in
10 your status report that since the last status conference on
11 December 8th you've, I'm going to round these numbers off,
12 produced approximately \$18,000 additional -- 18,000 additional
13 documents, consisting primarily of promotional and ancillary
14 rights agreements and contract extensions and termination
15 letters.

16 Any additional progress with respect to documents and
17 custodian collections and productions? Mr. Cove.

18 MR. COVE: Yes, Your Honor. Those were the -- some of
19 the fighter files that were the priority of -- it's an extensive
20 review because they require privilege review, but after we got
21 the plaintiffs' list of additional custodians on January 8th, we
22 arranged to have our vendor come out from New York. And
23 Ms. Lynch has been down here for quite some time living down
24 here, continuing collection. We've done I think all of the
25 custodial collections, and those documents are being prepared

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1 for processing. And we are working, you know, diligently and as
2 fast as we can to --

3 THE COURT: And what are you fighting with respect to
4 the privilege review and what percentage of the files contain
5 any materials potentially or arguably privileged?

6 MR. COVE: I don't have a percentage on that right now,
7 but I do know we have to review them page by page to see whether
8 they are privileged. You know, they're fighter files that deal
9 with a particular fighter and the contract and who has the
10 contract and the extension letter and so forth. And I think in
11 our original presentation to you we thought that there were not
12 going to be privileged documents there. We reported to you last
13 time that there were, in fact, privileged documents --

14 THE COURT: Right. And so now I'm trying to figure out
15 if this is a little tiny problem or if this is a big problem
16 because --

17 MR. COVE: Well, I don't think it's -- I mean, we're
18 going to do it. It's just -- it just does require attorneys
19 sitting there and reviewing the documents, I mean. So I am
20 not -- I'm not suggesting we need relief from it. I'm just
21 saying we are going through the process as fast as we can and --

22 THE COURT: And about what percentage through the
23 process are you?

24 MR. COVE: Well, we have --

25 THE COURT: And you can rely on cocounsel who is

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1 actually doing --

2 MR. COVE: Ms. Lynch has been doing it. Why don't you
3 come on up?

4 THE COURT: Ms. Lynch?

5 MS. LYNCH: Your Honor, we are -- we are still in the
6 process of processing and loading the custodial documents.
7 Right now I would say that we are through a very small
8 percentage of the documents. Once we have --

9 THE COURT: For privilege review?

10 MS. LYNCH: For all review. We are doing privilege
11 review and responsiveness review at the same time.

12 MR. COVE: So these are documents that are being
13 reviewed without search terms. We're just going straight
14 through. So that's where we are.

15 THE COURT: All right. And do you have an estimated
16 time in which you'll be through with the process of reviewing
17 the document categories that the plaintiffs have prioritized
18 with respect to the fighter files and promotional and ancillary
19 rights agreements?

20 MR. COVE: Well, I think what they've prioritized is
21 the fighter files, and that's what we're doing first. I don't
22 think we have -- do we have an estimate right now?

23 MS. LYNCH: We do not have an estimate right now.

24 THE COURT: Do you have an estimate of how far --

25 MR. COVE: We are producing them on a rolling basis as

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1 we get through. We're not saving them up.

2 THE COURT: Right. And what, if any, progress have you
3 made with respect to the plaintiffs' letter requests proposing
4 limitations on certain other requests for production of
5 documents that as of the time of the status report was filed
6 Zuffa had not yet given its formal response?

7 MR. COVE: Well, Your Honor, most of those are -- many
8 of those are dependent on the search term issue. We have
9 discussed -- many, many of these requests are very broad and our
10 view is if --

11 THE COURT: Great. Now --

12 MR. COVE: I'm sorry.

13 THE COURT: -- they're broad.

14 MR. COVE: Yeah.

15 THE COURT: And some of them, if I understand
16 correctly, request all documents.

17 MR. COVE: Yes.

18 THE COURT: And the plaintiffs have agreed to reduce
19 them to a sufficient number of documents to show type of
20 language.

21 MR. COVE: I disagree with that characterization, Your
22 Honor. They haven't reduced them to document -- I mean, there
23 are certain ones, yes, they have reduced it or they started out
24 or have been reduced to documents sufficient to show. And I
25 think we can work through those issues. We've been focussed on

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1 this issue for the last week of search terms. We got the search
2 term list on Tuesday which had 2,500 search terms on it. And I
3 have to admit, we didn't make much progress in addressing
4 anything else from that time until today.

5 But there are -- there are some certain -- there's some
6 extremely broad all document requests, RFPs. There are others
7 that are more narrowly tailored, but we believe that could be
8 best searched using search terms with these custodians. And
9 there's others, such as the corporate documents, what's the
10 relationship between Zuffa, LLC and Zuffa Holding, what are
11 the -- you know, certain board member material that were sent to
12 the board, and so forth. Those are targeted requests that we
13 can deal with separately. They've been somewhat back-burnered
14 because, you know, the issue of the relationship between Zuffa
15 and Zuffa Holding Company is not particularly key to this case,
16 and we'll -- I'm confident we'll be able to address those
17 issues.

18 But the problem is for a large category of the document
19 requests, they are extremely broad and we think that those that
20 aren't broad can be addressed by the search term issue as well.
21 We'll search, when we have search terms, all of the 22
22 custodians in addition to all of these documents that we're
23 already searching. We don't need a -- the documents we're
24 searching page by page right now, we don't necessarily need any
25 limitations. We're just going to do it. If they're responsive,

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1 even if the request is overbroad, we're producing them.

2 The concern is all of the other material, the 22
3 custodians, the noncustodial ESI that remains to be searched.
4 That's what we need the limitation on, and we think that we --
5 using search terms we can do that somewhat effectively and
6 address the problems of overbreadth as well as the practical
7 issue of addressing the remaining RFPs that aren't too broad.

8 I hope that was clear.

9 THE COURT: All right. So let's move on. We have a
10 protective order in place. You have meet and confer ongoing
11 regarding the breadth of the various discovery requests the
12 plaintiffs have propounded. And now the first discovery dispute
13 that requires the Court's intervention in this case deals with
14 the number of custodians that the Court has allowed in this
15 case.

16 And if I understand correctly, this dispute is last
17 time there was a list of 16. Three of those persons it was
18 disclosed did not have any specific ESI custodian files, and we
19 left here saying you were going to search to make sure you
20 didn't have materials for them. And now plaintiffs are
21 requesting that they get an opportunity to swap out three
22 additional custodians for the three: Bryan Johnson, Sonja
23 McKinney, and Michael Pine, who you have now confirmed do not
24 have custodian-specific files.

25 MR. COVE: Yes. Since Mr. Williams handled this last

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1 time, I'm going to defer to him on this particular issue.

2 THE COURT: All right. Well, let me hear first from
3 counsel for plaintiffs on this issue. And then I'll hear from
4 Mr. Williams.

5 Mr. Dell'Angelo.

6 MR. DELL'ANGELO: Good afternoon, Your Honor. Thank
7 you for the opportunity to address this issue.

8 In sum, your understanding of the issue is correct.
9 When we presented you with a list of custodians at the last
10 status, Your Honor, there were 44 proposed custodians on that
11 list. 13 at the top of the chart that we provided you as a
12 hand-up at the hearing were custodians for whom -- with respect
13 to certain categories. As of the date of the last hearing,
14 Zuffa had indicated they had no documents for it, no ESI, no
15 custodial files. And at the outset of the hearing, right before
16 we began, the parties agreed to defer with respect to those
17 custodians. So we were talking about I think roughly 26 or 28
18 other custodians.

19 I think some confusion arose because there was a group
20 of 16 custodians who the parties kind of colloquially referred
21 to as agreed custodians. Those are custodians as to which the
22 parties did not have a dispute as to whether or not they could
23 be included in the larger custodial mix.

24 The defendant's proposal at that time was that
25 plaintiffs could have the 16, plus any two of their choosing.

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1 So in theory --

2 THE COURT: And you wanted a total of 44, and that's
3 correct.

4 MR. DELL'ANGELO: Right.

5 THE COURT: And so I said you get the 16, and you can
6 pick three or -- excuse me -- six additional of your choosing.

7 MR. DELL'ANGELO: That's correct.

8 THE COURT: And you did that.

9 MR. DELL'ANGELO: That's correct, Your Honor. And --

10 THE COURT: And now they confirm what they told you all
11 along is that the three of the 16 didn't have any ESI-specific
12 files.

13 MR. DELL'ANGELO: Well, as of the time of the last
14 hearing there was an open question as to whether or not three of
15 those custodians: Pine, McKinney, and Johnson, may have had
16 other files that Zuffa had not yet confirmed whether or not they
17 existed, like hard copy custodial files.

18 THE COURT: Correct. But if I understand their status
19 report position correctly, they're agreeing to produce any hard
20 copy files. They believe those three individuals may have
21 documents in the fighter files and negotiation files and so
22 forth. They're going to produce all of those. They're going to
23 produce any hard copy files. They're going to produce any
24 documents for those three custodians that are contained in ESI
25 of other custodians, but now you want more than that.

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1 MR. DELL'ANGELO: I think the issue is somewhat
2 different, Your Honor, and I understand how Zuffa has framed the
3 issue, but I don't think it accurately reflects what a custodian
4 is. So what they're really saying, as I understand it, is to
5 the extent Pine, McKinney, or Johnson has a document within the
6 larger collection of documents that they're otherwise going to
7 produce, they're not going to exclude them, you know, because
8 we're asking that they be replaced as a custodian. But what the
9 defendant has now confirmed is that for those three custodians:
10 Pine, McKinney, and Johnson, they have no custodial documents
11 whatsoever.

12 THE COURT: Correct, but you had a pretty good idea of
13 that before the last December 8th conference because they stood
14 up and told you that.

15 MR. DELL'ANGELO: That's correct, Your Honor, but prior
16 to the conference, what we -- and I think what Mr. Williams laid
17 out for you is that with respect to the 13 custodians for whom
18 there was an understanding there very likely were no documents,
19 the parties had agreed to --

20 THE COURT: Set those aside, of course.

21 MR. DELL'ANGELO: -- set those aside. Right.

22 THE COURT: But with respect to these three, you had an
23 interest in confirming --

24 MR. DELL'ANGELO: That's correct.

25 THE COURT: -- whether --

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1 MR. DELL'ANGELO: That's correct. But hadn't confirmed
2 that these custodians have no documents. They are not for all
3 intents and purposes a custodian of any kind, and certainly not
4 ones knowing fully that they had no documents whatsoever
5 custodians that we would have selected. I think the problem is
6 they were swept in because they were part of the, quote,
7 unquote, agreed custodians.

8 THE COURT: Well, they were swept in because you wanted
9 them included.

10 MR. DELL'ANGELO: To the extent that they had some
11 documents, yes. But that was a question as of --

12 THE COURT: You included them as possible custodians
13 because you believed they were individuals likely to have
14 discoverable information that your side of the table wanted.

15 MR. DELL'ANGELO: That's correct, Your Honor, and they
16 ultimately turned out to have no documents whatsoever. So
17 there's no devices. There's no ESI. There's no custodial
18 electronic folders, as we understand it, no hard copy documents.
19 So, in effect, they're not custodians of anything.

20 And so what we would like is the opportunity to
21 actually identify alternative custodians for whom Zuffa has
22 documents.

23 THE COURT: And so have you done that yet or --

24 MR. DELL'ANGELO: We have, Your Honor. We proposed
25 that Pine, McKinney, and Johnson be replaced with Sholler,

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1 Hurley, and Bellamy.

2 THE COURT: One of whom is in-house counsel?

3 MR. DELL'ANGELO: That's correct. And we submit would
4 fall within the provisions that the Court laid out at the last
5 hearing with respect to legal custodians, that is, that the
6 parties work to define a protocol to limit potentially
7 privileged documents.

8 THE COURT: So you haven't yet received ESI from the
9 other side?

10 MR. DELL'ANGELO: We have received a production, yes.
11 And some -- yes, those documents are in electronic form. So I
12 don't think we've received any ESI with respect to any of the
13 custodians, but we have the FTC production --

14 THE COURT: That's what I meant.

15 MR. DELL'ANGELO: Yes.

16 THE COURT: With respect to the 22 custodians that the
17 Court ordered.

18 MR. DELL'ANGELO: Correct. We've not received any of
19 their documents, as I understand it, as yet.

20 THE COURT: And what were the criteria used to select
21 the additional three custodians, if I allow you to swap them out
22 for the three?

23 MR. DELL'ANGELO: Well, first of all, we operated on a
24 pure numerical system. That is, there were three with no
25 custodians so we in theory assumed that it would be possible

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1 and, you know, fair to replace three. And, really, what we did
2 was took the list that we prioritized as plaintiffs' counsel
3 with respect to the --

4 THE COURT: And you went down the next three on the
5 priority of your list?

6 MR. DELL'ANGELO: In terms of priority, yes, those are
7 the three that we recognized appeared, based on the information
8 that we were provided, to actually have documents and that --

9 THE COURT: So address with specificity why it is that
10 you believe these three custodians should be included.

11 MR. DELL'ANGELO: Okay.

12 So each of the custodians that we selected was really
13 based on filling in --

14 THE COURT: Start with the -- custodian No. 1 that you
15 propose and tell me why that custodian is likely to have
16 critical information such that I should allow you to get
17 additional ESI.

18 MR. DELL'ANGELO: Sure. So Mr. Bellamy, for example,
19 was identified by Zuffa in its responses to plaintiffs'
20 interrogatories with respect to certain specific categories of
21 information or responsibilities that we were interested in. And
22 that's one of the reasons why --

23 THE COURT: But give me some more detail.

24 MR. DELL'ANGELO: Just looking for my --

25 THE COURT: I'm sure they gave you a huge number of

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1 individuals' names with discoverable information in their Rule
2 26(a) disclosures, but I'm not going to give you ESI for all of
3 those names.

4 MR. DELL'ANGELO: I understand that, Your Honor.
5 Actually, the list in the Rule 26(a) disclosures of Zuffa was
6 not all that substantial, but what we did in Interrogatory
7 No. 26 was provide Zuffa with a list in our interrogatory of
8 certain categories like responsibility for merchandising
9 sponsors, those sorts of key issues to the case, and asked who
10 were the people who had primary responsibility in those areas.
11 And Mr. Bellamy, for example, I'm just looking for my note, I
12 believe came back as one of the individuals with
13 responsibilities in that area. Yes, as -- with respect to
14 broadcasters, Pay-Per-View, and marketing events.

15 And Mr. Hurley was identified as a custodian --

16 THE COURT: Would you spell the name, please?

17 MR. DELL'ANGELO: Yes. H-U-R-L-E-Y. Mr. Hurley was an
18 individual identified as having responsibility with respect to
19 merchandise. He was the Senior Director of Consumer Products.
20 And I would just add, I'm just going through my list here, Your
21 Honor, that Mr. Bellamy also was identified as having and we
22 have separately I believe concluded that he had responsibility
23 with respect to venues. And make sure I'm complete here.

24 And Mr. Sholler is the Vice President of Public
25 Relations and Athlete Marketing Development and was identified

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1 as having responsibilities with respect to public relations and
2 media relations. And based on what we understand about
3 Mr. Sholler, he would have relevant responsive documents as
4 well.

5 And I would note that his documents as well as
6 Mr. Hurley's were actually fairly small. I think it's 31,000
7 total e-mail documents and 3,300 network documents. And for
8 Mr. Sholler I believe it's even smaller. I think it was about
9 10,000 documents, e-mail documents, doing that from memory.

10 THE COURT: So let me hear from counsel for defendants.
11 Mr. Williams, you have a point on this issue?

12 MR. WILLIAMS: Thank you, Your Honor.

13 Good afternoon, Your Honor. I think you absolutely
14 have an understanding of what the issues are here with respect
15 to this issue so I won't take a lot of time addressing it.
16 Where I'll start, Your Honor, is where we were last time we were
17 here, and these are not our words. These are the words of the
18 plaintiffs. And I'm reading from Document 206, the prior joint
19 status report, at page 6, beginning at line 8. They state: *The*
20 *parties have agreed on the identity of 16 custodians. Three of*
21 *whom defendant has indicated do not have any documents on its*
22 *e-mail server, any documents in custodian-specific folders on*
23 *defendant's network drive, or any retained devices.*

24 They drop a footnote, Footnote 12: *Without identifying*
25 *any discoverable material, there is no burden associated with*

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1 *including these three individuals as custodians.*

2 Going back up plaintiffs say: *Plaintiff proposed*
3 *including all 16 custodians in this matter.*

4 So the point is, Your Honor, there was no dispute with
5 respect to the status of these three individuals. I did stand
6 up here and tell the Court, because I drew a very pointed
7 question from Her Honor when I said, We will go and look in
8 potentially other places, i.e., hard document files either on
9 property or archived to see if there's anything else for these
10 three custodians and other custodians, quite frankly. To which
11 the Court said to me, So you're going to search to confirm that
12 you don't have anything?

13 And that's what we did, and we confirmed that down the
14 road. So there was no ambiguity with respect to the state of
15 affairs regarding these three individuals.

16 The plaintiffs in the status report, Your Honor, had
17 four and a half pages to address the custodian issue, and
18 nowhere in the four and a half pages does it say, In the event
19 it turns out that after more due diligence it's confirmed with
20 respect to these three custodians that they do in fact have
21 nothing, we're reserving our right to ask for three additional
22 people to replace them.

23 Mr. Dell'Angelo did a very fine job last time he was
24 here standing up articulating the plaintiffs' position as well.
25 I reread the transcript before I got over here today. At no

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1 time did he say before the Court at the status conference that,
2 In the event it turns out these three people don't have
3 anything, we're reserving the right to replace them.

4 This came up after the fact, Your Honor. The Court
5 knew what the state of affairs were. Plaintiffs knew what the
6 state of affairs were, subject to us confirming whether we found
7 something or not. There was no hiding the ball here. They
8 still wanted them included as custodians. They argued it was
9 wasn't as burdensome for us to search if they were included
10 because they didn't have anything. And so they don't -- in our
11 view, they don't get to revisit this issue.

12 Now, with respect to Mr. Johnson, Mr. Pine, and
13 Ms. McKinney, I think it is important to note, I think the Court
14 understands this, it's not as if they're not going to have any
15 insight into what these individuals did. In the contract files,
16 Your Honor, they're going to see contracts produced that were
17 negotiated and signed by Mr. Johnson and Mr. Pine. In the
18 fighter files they're going to see correspondence authored by
19 Ms. McKinney. They're going to have an understanding of what
20 these people did. So to say that they aren't custodians is --
21 because they don't have anything isn't tantamount to saying that
22 they aren't going to know what these people were doing and what
23 their work roles were with the company.

24 So I don't -- you know, and with respect to the new
25 proposed custodians, Your Honor, I'll just say that with respect

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1 to venues, they identified Mr. Bellamy as having something to do
2 with venues. Well, they have Pete Dropick and Donna Marcolini
3 already as custodians. They are going to be getting information
4 regarding venues from those folks. They don't need us to, you
5 know, go through the 135,000 e-mails that are presently
6 appearing for Mr. Bellamy to get them more information on that.

7 With respect to merchandising, they have Tracey
8 Bleczinski already, Your Honor, as a custodian. So I don't
9 think that the selection of the new custodians is truly giving
10 them something that they don't already expect to get with
11 respect to people they've already named.

12 THE COURT: Mr. Dell'Angelo, it was my intention, it
13 remains my intention, to limit you to the six additional beyond
14 the 16 that were selected for the first round. I told you, and
15 I regard this as an iterative process, See what you get, and if
16 you in conducting the discovery and reviewing the information
17 that you do get find that there is some critical player or a
18 very important player who is appropriately subject to an
19 additional request, I will keep that door open, but I'm doing
20 this as a, Let's get focussed. Let's see what you get. Let's
21 see what information you have. And then we'll fill in the holes
22 if you find those.

23 And so I'm leaving that door open, but for purposes of
24 making progress and get what you get, read what you read, and
25 find out if there are significant holes in the discovery. And

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1 if so, I'm going to entertain a reasonable request to require
2 the other side to supplement, but I'm limiting the custodians at
3 this point to the 22 that I initially ordered at the last
4 hearing.

5 MR. DELL'ANGELO: Thank you, Your Honor.

6 THE COURT: Moving onto our next dispute which is an
7 issue with respect to, keep them in the order you raised them in
8 the search terms, the plaintiffs submitted a list of 2,600
9 search terms. You pared that down to 23. The defendants want
10 91 search terms to be applied. The plaintiffs' preference would
11 be a, quote, linear review.

12 So tell me, first of all, so that we have a record and
13 are clear on what you mean by a linear review, you want them to
14 review every single document that -- as opposed to applying any
15 filters at all? Mr. Dell'Angelo?

16 MR. DELL'ANGELO: Thank you, Your Honor. Michael
17 Dell'Angelo.

18 No, we're not suggesting that a linear review would be
19 review with no filters at all. In fact, Your Honor, we from the
20 outset back in September when we began discussing with the
21 defendants the process of reviewing, producing -- identifying,
22 reviewing, and producing documents discussed the number of ways
23 to reduce the overall volume and otherwise filter those
24 documents.

25 So first and foremost, as, you know, we're all aware,

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1 the total -- you know, the many hundreds of potential custodians
2 at Zuffa has been reduced down to 19 custodians who actually
3 have documents. So we began this process with, you know,
4 representations from Zuffa that the total ESI in this case
5 exceeded three petabytes of data. We now have it down to some
6 order, you know, of gigabytes, possibly a terabyte. I don't
7 think we have any specific detail yet on what that means, but
8 what we do have and we presented it to you at the last hearing
9 was the document counts.

10 Now, that's -- those document counts, however, are
11 somewhat overstated as we talked about --

12 THE COURT: No, I understand. You believe they're
13 grossly inflated because they don't involve -- you know, they're
14 not deduped. They're not filtered using various techniques to
15 get down to the essentials, but they counter as saying, But you
16 have in place an ESI stipulation that has parent/child
17 relationships. And so --

18 MR. DELL'ANGELO: And to that point, Your Honor, that's
19 precisely the it, is the point I was going to make to you is in
20 addition to narrowing the entire universe of custodial documents
21 at Zuffa down to 19, who actually have documents, we then
22 discussed and agreed to things such as e-mail threading, which
23 gets rid of e-mails that are not exact dupes, but keeps a thread
24 of e-mail. We've also agreed to de-duplication, which further
25 reduces that amount. We've of course set and the Court has

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1 established a relevant time period which fixes the period of
2 time that documents would be pulled from. We've also agreed to
3 demisting, you know, which is another technique which I can
4 discuss as -- you know, I think the Court's I think familiar
5 with the process, but happy to discuss, another technique to
6 reduce the overall volume.

7 And then of course with respect to the legal
8 custodians, in the process of negotiating with Zuffa about
9 various filters that can be put into place to reduce potentially
10 privileged documents.

11 So, you know, starting with this massive three
12 petabytes of data, we've gotten it down to a much smaller set
13 from a, you know, very finite set of custodians and then agreed
14 to a whole series of methods to further reduce that. I mean,
15 there's a method, for example, that Zuffa had proposed which was
16 a form of linguistic review. I think it was reported in one of
17 the earlier status reports that both parties participated in the
18 conference call with the linguistic review company. And I think
19 we both concluded that that method, you know, may not be very
20 effective or at least I think from my perspective was more a
21 function of the method the particular vendor had devised maybe
22 rather than linguistic --

23 THE COURT: They're selling the product. Surprise,
24 surprise.

25 MR. DELL'ANGELO: That's correct.

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1 So the -- it was our view for reasons that I'd like to
2 lay out for you that search terms, while, you know, arguably
3 workable in this case if you look at the set that we devised,
4 and I'd like to talk to you about how we devised those, but that
5 really the unique nature of the language used in this case just
6 doesn't lend itself very well to search terms.

7 So what we did was tried the develop a set of search
8 terms that would do a better job, at least, or a less
9 ineffective job than the search terms that Zuffa had presented.
10 And I would note, Your Honor, if you go back to the August
11 transcript from when the parties were before the Court, I
12 believe it was August 26th after the motion to stay was decided,
13 what the Court said, and I think it was right, is -- and this is
14 at page 29: *I'd also urge you to consider nontraditional*
15 *methods of searching for ESI instead of key words or custodian*
16 *searches which are expensive and the data shows not particularly*
17 *accurate.*

18 So we've done two things here. We've looked at lots of
19 nontraditional methods. We've adopted all but one, which is the
20 linguistic review, and I think the parties are agreement that
21 doesn't work here. And we've also used custodians to
22 substantially narrow what's possible. The dispute really boils
23 down to whether or not search terms make sense and why.

24 Zuffa has talked in its status report about the
25 possibility about a million documents resulting from the

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1 custodians. I don't know how accurate that estimate is because
2 again these filters haven't yet been applied, but the reality is
3 what we're trying to achieve is a set of documents that returns
4 a reasonable and reliable set of responsive materials. And I
5 think that for a number of reasons that doesn't work well here
6 with search terms.

7 I mean, the reality is we don't want more than we need,
8 but we do want the relevant responsive documents that we need to
9 prove our case. And the proposal that Zuffa has put forth
10 doesn't do that.

11 THE COURT: On the other hand, you say that your search
12 terms, when applied to the documents that were produced by Zuffa
13 to the FTC, has a 91 percent reliability rate.

14 MR. DELL'ANGELO: That's correct, Your Honor. And we
15 actually had a unique opportunity in this case, which is we had
16 a meaningful production, which was the FTC production that arose
17 out of the UFC's investigation into the UFC's --

18 THE COURT: All right. So tell me a little bit about
19 that. What was the nature of the FTC investigation such that it
20 gives you confidence in the documents that were culled for that
21 purpose?

22 MR. DELL'ANGELO: As I understand it, Your Honor, the
23 UFC acquired a potential competitor by the name of Strikeforce.
24 And --

25 THE COURT: Also known as Strikefarce in the --

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1 MR. DELL'ANGELO: Strikefarce and Strike space Farce,
2 yes, Your Honor, and who knows what else.

3 So in response to the UFC's acquisition of Strikeforce,
4 as we understand it, the FTC opened up an investigation into
5 the, you know, competitive or procompetitive or anticompetitive
6 nature of that.

7 THE COURT: Whether the acquisition violated trust
8 rules.

9 MR. DELL'ANGELO: In effect, Your Honor. And as a
10 result, as we understand it, the UFC collected documents and
11 produced them to the FTC. Now, as Zuffa points out, we know the
12 custodians from whom they were collected. We don't know --

13 THE COURT: You got the metadata, though. You know the
14 fields.

15 MR. DELL'ANGELO: We know -- right, but we don't
16 know -- there's a lot that we don't know, but we do know
17 something. That's exactly right.

18 THE COURT: So how many custodians were used to collect
19 the documents that Zuffa produced to the FTC?

20 MR. DELL'ANGELO: I don't know that -- I don't think I
21 have that information at my fingertips, Your Honor, but what I
22 can tell you is --

23 THE COURT: But those are the -- those are documents
24 you'd like to have?

25 MR. DELL'ANGELO: Well, we have -- we have the FTC

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1 production. That has been --

2 THE COURT: I understand that, but they are documents
3 that you believe were very probative of some of your claims,
4 correct? So how many -- because I'm now talking to you about
5 the reasonableness of discovery --

6 MR. DELL'ANGELO: Yes.

7 THE COURT: -- and trying to assess proportionality and
8 tailor discovery appropriately. So if Zuffa was able to cull
9 107,000 documents from X number of custodians on a key issue
10 that crosses over to your case, how many of those custodians
11 were involved?

12 MR. DELL'ANGELO: I don't know the number of custodians
13 that were searched in the FTC production, Your Honor. I
14 understand that information is contained within the metadata.

15 THE COURT: You have it. You just don't know the
16 answer.

17 MR. DELL'ANGELO: I don't know the answer as we stand
18 here.

19 THE COURT: That's fine. I understand that.

20 MR. DELL'ANGELO: I apologize for not having that at my
21 fingertips.

22 THE COURT: The point is to try to assess they know who
23 their people are that were likely to have relevant information
24 that the FTC wanted in whatever form, document requests or
25 production requests or subpoenas, as demanded. So they went to

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1 the people that they knew would have the information.

2 MR. DELL'ANGELO: Well, one point --

3 THE COURT: And that would tell you who those people
4 are.

5 MR. DELL'ANGELO: Right. One would assume. We didn't
6 really have any transparency into that process. And as I
7 understand it, it was about four or five years ago.

8 But Your Honor is correct, and I think it is a unique
9 and useful data point here, that the documents produced in the
10 FTC production bear a relation to the allegations in our
11 complaint and they are a useful data point by which to compare
12 search terms. And you are right.

13 So what we did is several things is we worked with, you
14 know, some of the experts that we have in this area that
15 developed a set of terms that we thought made sense for this
16 case, to the extent that we knew, but then we also went through
17 the FTC production, which is a slice, right, of the --

18 THE COURT: But a pretty good slice.

19 MR. DELL'ANGELO: It is a useful -- it's a useful
20 slice. It's not the whole pie.

21 THE COURT: It doesn't give you your damages or
22 other -- but it's a pretty good indication of what the FTC
23 was...

24 MR. DELL'ANGELO: Right. And I think that their -- the
25 FTC's focus was much more limited. It was with respect to that

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1 particular acquisition. But, again, you know, for example,
2 we've asked for the requests that the FTC propounded. We don't
3 know what they are, so be it. So I can only -- I think we can
4 only surmise in this conversation, but you are correct. It is a
5 useful insight.

6 And so what we did is we went through that production,
7 you know, as best we could to identify the names of individuals,
8 nicknames, other terms. And that's where, for example, as Your
9 Honor noted, terms like Strikefarce came from as a, you know,
10 substitute for Strikeforce and Officers of Affliction, another
11 potential competitor --

12 THE COURT: The T-Shirt Guy.

13 MR. DELL'ANGELO: The T-Shirt Guy, right. Things that
14 I think it would be impossible for us to know, and that absent
15 seeing those examples, search terms likely wouldn't capture; but
16 yes.

17 So to actually just correct one thing, we initially
18 devised a list of 2,500 search terms, and one of the reasons
19 that is a substantial number is because remember there are
20 nearly 1,000 fighters, you know. So they have first and last
21 names. We did reduce that list to 2,300 in response to Zuffa's
22 views that we don't necessarily agree with for reasons that I'm
23 happy to address, but we got rid of a lot of the common names,
24 reduced that list down to 2,300. But a substantial portion of
25 that list, which is Attachment A to the status report, are names

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1 of individuals, fighters, promoters, managers, agents that we
2 believe, you know, have connection to the allegations in the
3 consolidated amended complaint during the relevant time period.

4 And what we did is then we ran our search terms on the
5 FTC production and we ran Zuffa's search terms. And, you know,
6 our terms yielded a result that was of 91 percent, and Zuffa's
7 was substantially lower. The number --

8 THE COURT: 57 to 69 percent depending on what you're
9 counting, and 84 percent if you include the parent/child
10 relationship documents, Zuffa tells me.

11 MR. DELL'ANGELO: No. So the 84 percent I think is
12 something that we should be clear about. The 84 percent that
13 Zuffa returned, if I understand it, was not on the FTC
14 production. It was on a ZFL production. And a ZFL production
15 is a production of contractual material, not --

16 THE COURT: And so that was your argument that they
17 cherry-picked the subset to get a higher result.

18 MR. DELL'ANGELO: Right. So when you have within
19 Zuffa's search terms terms that are essentially the name, you
20 know, embedded within the contract, inevitably you're going to
21 return, you know, a high rate of those contracts. But I do
22 think it's telling that when you're searching those contractual
23 files and Zuffa's terms still only return 84 percent versus our
24 99 percent that, you know --

25 THE COURT: The question is at what cost?

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1 MR. DELL'ANGELO: Well, applying the terms has no cost,
2 right. It's just more terms that are designed to identify
3 documents that are relevant that come from known class members
4 that use their nicknames, that come from potential competitors,
5 etc. So there's no cost in applying that.

6 Then there is the results. And, certainly, our search
7 terms, plaintiffs' proposed search terms, will return a higher
8 number of hits, but the set of terms that we have proposed at
9 Attachment A are terms that were very thoughtfully developed
10 based on allegations in the complaint. They're broken down by
11 key categories that we talked about throughout this process. I
12 mean, they're not terms that were, you know, sometimes as
13 parties doing -- kind of doing -- you know, shooting in the
14 dark, if you will, are creating in a vacuum. I mean, here we
15 had the opportunity to test them against an actual data set that
16 has some real relevance to the case.

17 And so we think the thoughtful design of those terms
18 will yield a meaningful subset of the roughly million or so
19 documents that Zuffa is talking about. So you're already
20 dealing with a rather finite set.

21 So what's the cost? It's the difference between the
22 production of whatever their search terms result -- returns
23 versus what ours do, but, you know, normally --

24 THE COURT: Well, and the manual review for privilege
25 or other responsiveness.

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1 MR. DELL'ANGELO: That's true, but among those 19
2 custodians for whom the search terms will be used, the Court has
3 already required that the parties implement a protocol for the
4 legal custodians to filter out potential --

5 THE COURT: Right. And so now my -- so my next
6 question -- because I understand what you're saying.

7 MR. DELL'ANGELO: Okay.

8 THE COURT: And it's really an issue, are you willing
9 to accept the product of your key word search without having
10 them identify the documents by discovery requests like they
11 would normally be required to do under Rule 33 or 34?

12 MR. DELL'ANGELO: I think we would, Your Honor. I
13 would like to maybe just quickly advise with my cocounsel, but I
14 think that's something --

15 THE COURT: Well, I'm just --

16 MR. DELL'ANGELO: -- that makes sense, yes. And I
17 guess, you know, just add with respect to your questions, in my
18 experience typically when search terms are used, there is an
19 understanding that there's not going to be a subsequent, you
20 know, relevance review, for example, that --

21 THE COURT: That dispute occurs with alarming frequency
22 before me.

23 MR. DELL'ANGELO: Okay. Correct.

24 THE COURT: So, yes, some people -- and that's why I
25 asked the question.

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1 MR. DELL'ANGELO: Yes.

2 THE COURT: Because I've had the experience of leaving
3 here and each side having a different assumption. What about a
4 claw-back provision?

5 MR. DELL'ANGELO: I believe that the current protocol
6 that the Court's already approved has a claw-back provision in
7 it. If it requires revisiting, we can revisit it, but I think
8 that that issue has already been resolved. I mean, in terms
9 of --

10 THE COURT: And I guess the real question I'm asking
11 you is if I adopt your proposal with respect to the number of
12 search terms that you're requesting that they run, are you
13 willing to get the -- what some people would call a document
14 dump without review for responsiveness?

15 MR. DELL'ANGELO: We are, Your Honor, but I would
16 submit to you that those terms were really very thoughtfully and
17 carefully developed.

18 THE COURT: I'm not --

19 MR. DELL'ANGELO: Since I don't think it will be a
20 document --

21 THE COURT: Now, I'm testing your -- because it's one
22 of those be careful what you get.

23 MR. DELL'ANGELO: I understand.

24 THE COURT: And if you get 9 million documents and I
25 grant your request, the burden's going to be on your side to

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1 review those 9 million documents and organize them, determine if
2 they're responsive, and so forth.

3 MR. DELL'ANGELO: Well, we're prepared to accept that
4 risk, I mean, and there's a couple of I think pretty clear
5 reasons. One, because it's necessary to get the relevant
6 documents. Two, the list was very thoughtfully prepared
7 because, frankly --

8 THE COURT: I understand. I'm just testing you.

9 MR. DELL'ANGELO: We don't want more than we need. But
10 the other thing is, you know, Zuffa has laid out in its papers,
11 at least with respect to the custodians that we're dealing with,
12 at least in our world of cases of this complexity and size and
13 the amount in issue, a million documents as the potential
14 outside --

15 THE COURT: It's not that many in this modern era. I
16 get that.

17 MR. DELL'ANGELO: -- is really not that many. And if
18 our terms reduce it to 800,000, it's actually what I think we
19 would consider for this type of case to be a small set of
20 documents. So we're fully prepared to accept that risk.
21 With -- I would like to make one just additional point,
22 particularly in light of Mr. Williams' argument with respect to
23 custodians about reservation of rights, and we did put this in
24 the joint status report.

25 But particularly because we're dealing with nicknames

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1 and idioms like Strikefarce and T-Shirt Guy that plaintiffs I
2 think simply can't know without looking at documents, we would
3 like to reserve the right to at least address with the defendant
4 and the Court as, you know, additional idiomatic or, you know,
5 sort of home-grown terms arise, we have the opportunity to --

6 THE COURT: Every civil case is like this.

7 MR. DELL'ANGELO: Okay.

8 THE COURT: You go out there. You do your homework.
9 You do your discovery. You look at stuff. And then you find
10 more information, and then you have a discussion about what's
11 reasonable follow-up. And I always understand that. It's not
12 written in stone. That's why I told you with respect to the
13 number of custodians it's an interim process. The 22 seemed to
14 me to be adequate to get you a fundamental understanding of your
15 claims and their defenses, but if things change and you find out
16 somebody's some critical person that you had no appreciation of,
17 that door remains open.

18 MR. DELL'ANGELO: Okay. Thank you, Your Honor.

19 THE COURT: But...

20 So let me hear from defense counsel. Okay. Mr. Cove
21 will be addressing your position in this regard.

22 MR. COVE: Thank you, Your Honor.

23 THE COURT: So how many custodians did you have for the
24 FTC document production?

25 MR. COVE: I don't have that number off the top of my

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1 head either. We did not handle that document production. It
2 was handled by another law firm back East. And it was not quite
3 as formal as this. My experience in responding to the FTC
4 requests and when I was at the justice in the antitrust division
5 doing the same thing is the process is a little more targeted
6 towards what documents they are looking for and can get in a
7 reasonable time and not as formalized as --

8 THE COURT: Did you get a holder memo?

9 MR. COVE: Pardon me?

10 THE COURT: Did you get a holder memo request?

11 MR. COVE: A holder memo request...

12 THE COURT: Attorney General cooperate and waive or
13 your lack of cooperation will be used against you in a potential
14 criminal prosecution.

15 MR. COVE: That -- I left the DOJ in about 2001. So I
16 was out of that --

17 THE COURT: The holder memo was 2002.

18 MR. COVE: Yes. He wrote a few -- he wrote a few
19 memos. I was having trouble bringing them to mind.

20 THE COURT: I was just dealing with it in another MDL,
21 so I --

22 MR. COVE: Yes. I remember when that -- when that came
23 out and the controversy that it caused. And, quite frankly, I
24 didn't agree with it then and I don't agree with it now.

25 THE COURT: I'm only asking you because it's pretty

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1 good evidence of what some very bright people thought was
2 critical information that would satisfy the government of the
3 government's antitrust concerns.

4 MR. COVE: Yes, and I think that was a little bit
5 different in that it was used -- it was more in the criminal
6 context. Whereas, in the -- I was referring to the FTC. DOJ
7 does both civil -- civil mergers and criminal price fixing. So
8 on the civil side what we did was similar to what the FTC did,
9 is this transaction going to reduce competition or not. You
10 need to decide pretty quickly before the -- before the -- so the
11 transaction needed to be blocked or proceed. And the method of
12 getting the documents is to try and get the key documents
13 quickly and not --

14 THE COURT: Precisely my point.

15 MR. COVE: And not have a --

16 THE COURT: That you go to the people that you know
17 have the key documents.

18 MR. COVE: Exactly. Exactly. And I'm sure, having
19 just glanced at the production, that the key people who are --
20 we've identified all -- we identified in our original nine
21 custodians that we originally proposed who the key people were,
22 and I suspect that those -- I'm sure that some of those were
23 custodians. And I'm not going to make a representation that no
24 one else was, but...

25 THE COURT: Okay. So now --

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1 MR. COVE: Because that was several years ago. So the
2 metadata is there.

3 THE COURT: I understand your argument. They've given
4 you a huge list, but they also point out, somewhat persuasively,
5 that your industry uses a lot of idioms and nicknames and
6 different things that typical simple key word searches are not
7 designed to capture.

8 MR. COVE: Well, let me... Could I back up before I
9 address your question?

10 THE COURT: Of course.

11 MR. COVE: I don't want to ignore your question, but I
12 think it's worthwhile to back up a little bit.

13 I think we've got to get this in context. First, right
14 now at this point we have, thanks to Ms. Lynch's hard work,
15 identified that we have at least a million e-mails that are
16 separate de-duplicated e-mails and are --

17 THE COURT: That's fine, but I also understand in this
18 day and age --

19 MR. COVE: Right.

20 THE COURT: -- that's not unusual at all.

21 MR. COVE: And we have 100,000 -- over hundreds --
22 perhaps, hundreds of thousands of cell phone messages that have
23 been saved. Now, those are not -- we haven't excluded personal
24 from business there, and most of those I hope will turn out to
25 be personal e-mails because people use their cell phones for

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1 both. But those are going to be reviewed without search terms.
2 We're reviewing huge numbers of documents from the
3 contract files without search terms, which are the key documents
4 in the case. They're alleging these contracts were
5 anticompetitive, and they're going to get all of the contracts
6 and all of the documents that were in the contract files without
7 any --

8 THE COURT: Right. But presumably a lot of those are
9 duplicated documents and the same form contract has been used or
10 maybe some addendums. I mean, how many copies of a mortgage
11 agreement do you need before you know --

12 MR. COVE: Well, that's true, but what they're asking
13 for -- I can turn that argument around. They've named every
14 fighter in the punitive class, every venue that was used, which
15 would be on the name of every reference to the event that's
16 found in the documents, every sponsor that they could identify.
17 So it's essentially how many documents relating to every single
18 fighter. Does every document relating to every single fighter
19 and to every single sponsor and every single venue need to be
20 reviewed and produced here? And there 's an enormous time and
21 cost involved in the program --

22 THE COURT: Which is exactly why I asked them if they
23 were willing to take the production, applying their terms,
24 without a review for responsiveness. And they undertake that
25 review on their own dime.

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1 MR. COVE: Understood, but we still -- I mention the
2 claw-back provisions as well. We're not in a position to and
3 we're not willing to provide documents that haven't been
4 reviewed for privilege. The claw-back provision is, in our
5 view, an inadequate substitute.

6 THE COURT: Sure, but there are going to be some
7 custodians that you absolutely know are unlikely to have legally
8 protected materials, aren't you?

9 MR. COVE: No.

10 THE COURT: That's the whole point of the discussion
11 last time about the filtering techniques to identify more likely
12 privileged than less likely privileged.

13 MR. COVE: Those techniques were -- we had offered to
14 use with regard to the legal custodians.

15 THE COURT: Correct, but --

16 MR. COVE: The three legal custodians. So if something
17 came from Mr. White's, the president's office, that would be
18 reviewed and privileged -- and if it were privileged, it would
19 be claimed as privileged under the normal course. Now, we
20 could -- and we've got a separate proposal to deal with specific
21 people in the legal department, Mr. Hendrick, Ms. Long,
22 Mr. Mersch --

23 THE COURT: I'm only asking you -- yes, you can look at
24 every single document that you produce for privilege, but you
25 can also say, The guy in the mail room is not going to have any

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1 privileged documents in all likelihood and we can employ some
2 down and dirty techniques to screen out anything that might slip
3 through.

4 MR. COVE: Well, this is a small company. And the
5 issues we're dealing with here are all contract issues, which is
6 the heart of the allegation of the complaint. And lawyers are
7 consulted every day on these decisions, and it's always not
8 easy -- it's not always an easy call as to what's privileged or
9 what's not. As we've said, you know, sometimes the lawyers, you
10 know, engage in business functions. There's no question about
11 that.

12 And so we've got to do that review, and your reference
13 to the holder memo was interesting. It's really giving up the
14 attorney/client privilege is a big, big step to take that we are
15 not willing to take.

16 So --

17 THE COURT: Well, that's the point of the claw-back
18 agreement --

19 MR. COVE: No, I understand.

20 THE COURT: -- that you don't. But -- and that's
21 really the point that I'm trying to raise with you is that
22 certainly there are certain things that I don't care how iron
23 tight your claw-back agreement is, you don't want the other side
24 to see.

25 MR. COVE: That's true.

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1 THE COURT: But there are lots of documents and lots of
2 custodians of documents that you know, based on your discussions
3 with your client, are unlikely to have that category of
4 sensitive document.

5 MR. COVE: It's really -- and e-mail you can't -- it's
6 harder. You can't tell in advance. I mean, you can use various
7 screens, but somebody's going to have to review those documents.
8 And it's not just the e-mails, but it's all of the other
9 noncustodial documents we've agreed to search as well.

10 The problem here, I think, is -- well, let me -- if you
11 don't remind, I'll respond to some of the specific things that
12 Mr. Dell'Angelo said. And I want to go back and talk about the
13 real problem here is the RFPs are not tailored to the needs of
14 this case.

15 THE COURT: Well, that's why I started off by talking
16 to you about whether you've had the meet and confer to narrow
17 down those requests.

18 MR. COVE: Yes.

19 THE COURT: And your response to me was, that depends
20 on the search -- you know, the answers to those questions is
21 going to turn on what you do with the --

22 MR. COVE: Yes. I mean, well, we have that notice --
23 let me dress that issue right now. We have had those
24 discussions and we pointed out -- let me take one issue, just
25 one contract, just an example to walk through.

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1 What the complaint alleges is that Zuffa, quote,
2 imposes its exclusivity provisions into its physical venue
3 agreements that severely limit, in some cases remove altogether,
4 the ability of any would-be competitor to hold MMA events at
5 premiere venues in the United States.

6 And then it goes onto say that there are black-out
7 provisions that prevent the venue from holding a competing event
8 when there is a specified time before and after a UFC event.
9 That is it with regard to venues. They don't allege any threats
10 with regard to venues. That's it. They allege that of the
11 maybe 20 or so events that the UFC holds or -- excuse me. The
12 UFC -- this is an extraordinarily thin allegation. UFC holds
13 events at approximately fewer than 20 venues in the United
14 States in the course of a year, 2015, fewer than 20 events.

15 And the allegation is that this is somehow more closed
16 access to competitors who want to put on MMA events. That's an
17 extraordinarily thin allegation and it is a very limited
18 allegation. But they have -- they've got two custodians now,
19 Mr. Dropick and Ms. Marcolini who are primarily related to
20 venues. Ms. Marcolini is primarily a logistics person, which
21 we've told them, and they want every document related to any
22 contract with any venue. Their request calls for all documents
23 relating to or from any agreements with a venue and all
24 negotiations relating to them regardless of whether an agreement
25 was reached or not.

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1 So this is an extraordinarily overbroad allegation in
2 the context of this case, and they're getting all of the
3 contract files anyway. So they would now have to go and search
4 every time a venue was mentioned, which is -- and a venue is
5 mentioned in connection with every event because that's how they
6 identify it. UFC 197 at Garden Center in Boston, for example.

7 That request does not meet the federal rules. And what
8 we have consistent -- and we've raised these issues and they've
9 come back and said, Well, we don't -- you know, we don't need
10 documents relating to insurance. We don't need documents
11 relating to security or routinely logistical documents, but
12 there's never been a specific proposal that's going to limit the
13 searching there. So we're going to have to search every
14 document in order to respond to just this one --

15 THE COURT: Correct. So let's -- with respect to the
16 custodian that you've identified, who is the logistics person,
17 so if they get more than --

18 MR. COVE: Well, Mr. Dropick is the person in charge of
19 venues. He deals with negotiating the contracts. He deals
20 with -- you know, he may deal with logistics --

21 THE COURT: Right. And so he is the person who is more
22 likely than the other woman you mentioned who handles the
23 logistics to have privileged documents. If they're willing to
24 take -- and I am going to slaughter her pronunciation because I
25 don't remember.

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1 MR. COVE: Marcolini.

2 THE COURT: Marcolini. If you give them everything
3 from Marcolini that is responsive to their search terms and they
4 have to slug through it instead of you, how are you harmed by
5 that?

6 MR. COVE: Well, we do have to slug through it. I
7 mean, that is the --

8 THE COURT: I'm questioning that premise.

9 MR. COVE: Pardon me?

10 THE COURT: I'm questioning that premise.

11 MR. COVE: Well, we have to -- we cannot -- to review
12 for privilege, we need a lawyer to do that and we got to pay a
13 lawyer. And we're not paying, you know, associates to do that,
14 but we're paying people who have law degrees to do that, that
15 review, in the first instance. And that is extremely burdensome
16 and expensive. I mean, the -- you know, you did instruct us at
17 the beginning of the case to investigate linguistic review. We
18 did --

19 THE COURT: I didn't suggest a method.

20 MR. COVE: No, not that you suggested it. You
21 suggested it, I mean. We investigated it. We thought it was a
22 good idea. I thought when we discussed it with the plaintiffs,
23 you know, our view was it wasn't going to be as effective or
24 with much assurance as search terms. The things they have
25 agreed to, e-mail threading, de-duplication, relevant time

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1 period, first of all --

2 THE COURT: Demisting.

3 MR. COVE: Well, demisting does not -- does not apply
4 to e-mails is my understanding, but those are routine in every
5 case. That's not a -- yeah. It's certainly not a negotiating
6 concession.

7 I think it's -- I think, you know, one point they've
8 made is how many documents they found in the FTC...

9 THE COURT: What confidence they have in your search
10 terms is what they're raising with me.

11 MR. COVE: Yes. Well, I understand. First of all, we
12 proposed search terms back in December. I've never been in a
13 search term negotiation that involved less than, you know, seven
14 or eight exchanges of various search terms. We got one search
15 term. We had two search term exchanges, 2,500 and then 2,300,
16 three days before the joint status report was due.

17 So certainly the -- they raised things like
18 Strikeforce. Of course, we put that on the list. Strikefarce,
19 of course we put that on the list.

20 Our list is not set in stone. It was what we thought
21 were the relevant search terms, and we fully anticipated they
22 would add some. We did not anticipate they would add 2,300 that
23 encompassed every --

24 THE COURT: Have you provided their proposed search
25 terms to your consultant or vendor that's collecting?

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1 MR. COVE: Not as of yet because we only finished the
2 collection based on when they told us about --

3 THE COURT: So do you have any idea of the number of
4 hits you're going to get if you run their search terms?

5 MR. COVE: I would be shocked. It's every -- it's
6 every fighter's name. It's every sponsor's name. It's every
7 venue's name. Plus, it's a bunch of other things. So I'd be
8 shocked if it -- if it came back with less than 95 percent. We
9 can do that, and we'll do that when we -- as soon as we're able
10 to. But, I mean, the fact -- I want to talk about the FTC,
11 their sampling of the FTC, because I think that's very
12 important.

13 There are reasons why documents that were provided in
14 the FTC would not turn up in search terms, and they're things
15 that we've addressed. First, there's the parent/child
16 relationship. Second, there's the issue of hard copy documents
17 that are OCR'ed. Much of that FTC production was OCR'ed, and
18 that's not always a perfect procedure. And that's exactly one
19 of the reasons why we -- we've agreed with hard copy documents
20 to review them one by one, and we're not proposing to use search
21 terms there.

22 And, in fact, the fact that their search terms,
23 applying all 2,300 of them, only hit 91 percent to me of the FTC
24 production is evidence that there is some problem with the FTC
25 production; that not all of those documents are -- something is

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1 not coming up in the searches because with -- it would be
2 impossible to think of another search term that was left off of
3 that list that is any -- would be in any way relevant to this
4 case in any way, shape, or form.

5 So that, A, the fact that they got 91 percent using
6 that broad list suggests to me that something is wrong with that
7 whole universe, you know, in the search there. And it also
8 includes financial stuff, financial documents, which aren't
9 going to turn up.

10 So, you know, all --

11 THE COURT: It probably beats having a room full of
12 baby lawyers that don't know very much about litigation looking
13 at documents one by one and determining whether there was
14 relevant responsive to privilege.

15 MR. COVE: Yeah, I think privilege is the big issue.
16 Somebody's got to -- and you know.

17 THE COURT: Right, but you're not doing that at the
18 partner level. You're not doing it at the level of somebody
19 that really has an appreciation of the case. You're --

20 MR. COVE: No, but what you do is you have the -- the
21 prudent way to do a privilege review is you have contract
22 lawyers of some sort --

23 THE COURT: Right.

24 MR. COVE: -- reviewing the documents, making the
25 initial call as to whether there's a privilege, and then you put

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1 it up to one of the law firms of record to do a review and see
2 is that really privileged or not. So it is a time-consuming and
3 expensive process.

4 THE COURT: I've done that. I absolutely appreciate
5 it.

6 MR. COVE: I understand, but...

7 So, you know, there hasn't been any cherry-picking
8 here. The ZFL production that he referred to is the priority
9 production that they wanted. That's the contracts and the
10 contract files and the financial --

11 THE COURT: No, they're just telling me those are the
12 easiest ones in which to get a good reliability return.

13 MR. COVE: Well, that includes -- it includes a lot of
14 financial documents. We gave them the financial stuff right up
15 front. So it includes all of those, which may not necessarily
16 respond to search terms -- any production which we are searching
17 for without search terms.

18 THE COURT: So how did you develop your 91 terms? Did
19 you do it with consultants or did you do it with lawyers?

20 MR. COVE: We did it with lawyers. We looked at what
21 we thought was relevant, the competitors, the -- you know, we
22 focussed on the issue of exclusivity. What they allege with
23 regard to venues, sponsors, merchandisers, TV networks is that
24 there's -- these contracts are exclusive or would have some
25 elements of exclusivity in them and that that is preventing

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1 people from competing. And with regard to sponsors, they have
2 some additional elements that some threat was made somehow.

3 And so we focussed on that concept. You know, is
4 there -- you know, things that would relate to exclusivity, why
5 there's exclusivity, and those sorts of things. And we're
6 certainly willing to meet -- meet and confer and talk about
7 search terms further. And we didn't really view when we sent
8 this list back in December that this was the last word on the
9 subject.

10 THE COURT: No, I understand that. Now, I'm trying to
11 make some progress. And I have peppered both sides with some
12 questions about why your respective proposals are superior, and
13 you've answered some of my questions about the approaches that
14 you've taken. And my inclination is to direct your consultants,
15 who will be doing the collection and review of the ESI, to talk
16 to one another about more meaningful narrowing of the search
17 terms that the plaintiffs have proposed.

18 MR. COVE: Okay. All right.

19 THE COURT: Because there's nothing like the people
20 that actually do the work with the technical knowledge to talk
21 to one another to hone in on more efficient ways and
22 cost-effective ways of doing things.

23 MR. COVE: Okay. We're very happy to do that, Your
24 Honor.

25 THE COURT: And, Mr. Dell'Angelo, is there any reason

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1 why you can't have your consultant -- do your folks know each
2 other? A lot of times in our -- it's a rather small industry.

3 MR. COVE: I don't think either side has identified
4 their consultant to the other, but we certainly are willing to
5 talk about that.

6 THE COURT: Is there any reason why that can't be done,
7 for the consultants to meet and confer and with a view towards
8 reaching an agreed-upon key word search terms, not simple key
9 word searches because I understand your questions there, but to
10 narrow the universe and to arrive at a consultant-generated
11 list?

12 MR. DELL'ANGELO: Well, Your Honor, I think that kind
13 of runs the risk of having the sort of non-lawyers devise the
14 list and gets us back to what's --

15 THE COURT: Yeah. That means you have to talk to your
16 consultants, and you have to tell them what you're -- what
17 you're most concerned about and what you're interested in and
18 what you're searching for. I mean, there are all sorts of
19 people that do nothing but technology-assisted review --

20 MR. DELL'ANGELO: I'm sure.

21 THE COURT: -- who teach the computer what to look for.
22 And some of the studies say that's much more reliable than even
23 very seasoned lawyers looking at every document in the case.

24 MR. DELL'ANGELO: Right. To be clear, though, Your
25 Honor, as I tried to articulate in my presentation, and if I was

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1 not clear on this point, I apologize, but not only did we not
2 develop search terms in a vacuum. But we did develop the search
3 terms working with our vendor up to this point. So --

4 THE COURT: I understand that, but now you have 2,300
5 terms and they have 91 terms. And now someone's going to have
6 to decide how many terms you get. And before I make that
7 decision, and I will, I would like to hear the input from the
8 consultants who talk to one another as experts in their field
9 about what is really necessary in order to give you each what
10 you think is reasonable.

11 So I'm going to require you to identify to each other
12 the consultants and permit the lawyers, of course, to
13 participate in the discussions, but this should be a
14 consultant-driven exercise after the consultants know what your
15 goals are, your respective goals are.

16 MR. COVE: Your Honor, I think that's a good idea and I
17 think off the top of my head without consulting with my client
18 that the vendor that we talked to about linguistic review may be
19 helpful in that process as well. And I would suggest that we
20 include him or her.

21 THE COURT: You can pick whoever you want to, but I'm
22 trying to suggest that sometimes the experts who just want to
23 get a job done do a better job than the lawyers who want to
24 fight with one another. And if you can't agree, that's what I
25 get paid for doing is making decisions, but sometimes both sides

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1 hate it.

2 MR. COVE: Understood. Understood. Thank you, Your
3 Honor.

4 THE COURT: All right. So I'm going to hold the next
5 conference on February the 23rd. So I'm going to require that
6 counsel make arrangements to have their consultants confer with
7 one another after the consultants get their marching orders from
8 counsel about your respective proposals concerning key word
9 searches for ESI. And let's move to the next issue here that
10 needs to be addressed.

11 Don't want to go out of order here. The relevant time
12 frame for four of Zuffa's requests for production of documents
13 which have to do with Requests 3, 16, 14, and 20. Zuffa
14 proposes that with respect to the named plaintiffs' contracts
15 dating back to January 1, 2000, be reviewed and produced. And
16 plaintiffs are proposing a narrower time frame, roughly a year
17 prior, with respect to the six named plaintiffs.

18 So let me hear from first plaintiff with respect to the
19 rationale for your proposed -- I get that the -- Zuffa's asking
20 you for 16 years' worth of contracts and -- yes, sir. You are
21 Mr. Saveri?

22 MR. SAVERI: I am Mr. Saveri, Your Honor.

23 THE COURT: All right.

24 MR. SAVERI: Nice to meet you.

25 THE COURT: Nice to meet you, sir. And you'll be

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1 addressing this issue?

2 MR. SAVERI: Yes. So I am happy to answer any
3 particular questions you have on it. I think --

4 THE COURT: Sure. Start -- question No. 1, you have
5 six named plaintiffs. Have you talked to your six named
6 plaintiffs about what documents they have, whether they have any
7 retained devices that are likely to have any materials dating
8 back to the time period for which Zuffa is seeking discovery?

9 MR. SAVERI: We have spoken to our plaintiffs. We have
10 made a collection at the beginning of the case. We --

11 THE COURT: How voluminous is the collection?

12 MR. SAVERI: I beg your pardon?

13 THE COURT: How voluminous is the collection?

14 MR. SAVERI: I have the -- I have the information in
15 the statement. I think that the...

16 Let me just... I don't want to guess, Your Honor. So
17 I can tell you the sources of the ESI and I can also, if you
18 give me a minute, come up with the numbers of e-mail accounts.
19 So -- and we've identified a number of different devices for
20 each of the named plaintiffs. They include a number of e-mail
21 accounts. They include laptops, desk tops, a number of mobile
22 devices, smart phones. There are also, for a number of them,
23 social media accounts. All of that information has been --
24 we've made efforts to preserve that, and we intend to do
25 searches on those devices.

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1 This particular question, though, in terms of the
2 e-mail accounts, let me give you the data. For Mr. -- for
3 Mr. Le our count is 23,771 e-mails.

4 THE COURT: Deduped or not?

5 MR. SAVERI: I believe these are deduped, but I am
6 not -- I don't know -- when I hesitate, I don't know if all of
7 the other techniques that we talked -- you were talking about a
8 few minutes ago have been applied to these accounts, but I
9 believe these are deduped accounts.

10 THE COURT: And the reason I'm asking you these
11 detailed questions is because you raised the issue of
12 burdensomeness. I appreciate that they're asking for
13 information dating back to a 16-year period of time. However,
14 you have also alleged in your complaint that Zuffa's
15 anticompetitive campaign began in 2006, and most of your
16 clients, in fact I don't think any of your clients, were
17 employed by Zuffa before 2004 or 2005, correct?

18 MR. SAVERI: Correct. Now, Mr. Quarry has about 8,000
19 e-mails. Mr. Fitch about almost 2,000. Mr. Vera almost 26,000.
20 Mr. Vasquez, another 25,000. Mr. Kingsbury, another 13,000.
21 Rounded numbers, obviously.

22 THE COURT: All right. And so those are the e-mail
23 files. And did your clients typically engage in contract
24 negotiations or contract execution via e-mail or the
25 old-fashioned way where they actually signed paper documents?

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1 MR. SAVERI: Well, there are certainly -- there's
2 certainly e-mail traffic about these -- about these subjects. I
3 mean, these are individuals. So some of these e-mail accounts
4 are not what you would consider commercial accounts. So they
5 were done through, you know, various ISPs and those types of
6 services. So --

7 THE COURT: Correct. But the requests that are at
8 issue in here are relevant contracts, documents sufficient to
9 show compensation for combat sports-related activity, documents
10 sufficient to show tolling or extensions of contracts. Those
11 are basically the three categories of materials that the
12 defendants are asking your clients to search for and produce
13 back to 1-1-2000.

14 MR. SAVERI: Right, and that also includes contracts,
15 Your Honor, with entities outside, not with the UFC. And so
16 there is a relevancy issue that obviously --

17 THE COURT: That's a different issue. Right now I'm
18 focusing on because you say it's too burdensome. It's too
19 disproportional. It is a 16-year period of time. But in truth
20 and in fact, how many of your six named plaintiffs are likely to
21 have very many contracts such that it's so onerous on them to
22 search for them and produce them?

23 MR. SAVERI: Your Honor, with respect to the contracts
24 themselves, within that time period, you are exactly correct
25 that the -- there are not a number of contracts. And we're

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1 prepared to search for them, and we've told the -- the UFC that
2 for Fitch and Vera we're willing to go back to October 2004.
3 THE COURT: I understand that. And now I'm questioning
4 why that's adequate given the nature of the claims that have
5 been made in this case and the beginning period of the
6 defendant's alleged anticompetitive monopolistic practices and
7 weighing that against the burden to your six named plaintiffs to
8 search their hard copy files for any contracts they have or any
9 documents that they have that are sufficient to show their --
10 any tolling or extensions of contracts.

11 MR. SAVERI: So with respect to the contracts
12 themselves, we can -- we can look for those. I think where the
13 problem and the burden arises with any requests for documents
14 relating to contracts, because at that point you have a broad
15 enough request that you're kind of arguably sweeping in all -- a
16 lot of different --

17 THE COURT: I didn't understand that they were asking
18 for all documents related to discussing, etc., but they're
19 asking for the contracts themselves.

20 MR. SAVERI: And we're agreeing to produce the
21 contracts. We've agreed for them to go back to the dates that
22 I've given you. We think beyond that, because it precedes the
23 time that we've alleged in this case, it's before the time
24 period that Your Honor has set in this case, it's --

25 THE COURT: But it gives them almost no information

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1 about your clients' prior background in the field, because they
2 only started with your client beginning in 2004 or '5.

3 MR. SAVERI: Well, I don't -- I would push back, Your
4 Honor, and say I don't believe that it gives them almost no
5 information. I mean, certainly, if you're talking about a
6 16-year period just full stop, there's a lot of information
7 about our clients' experience/activity in the field. And, sure,
8 Your Honor, we think that we don't want to go back to the
9 beginning of time and we're trying to figure out some reasonable
10 limits of that, consistent with the Rule 26, you know, weighing
11 of burden and proportionality. And so we believe --

12 THE COURT: And how far back am I giving you
13 information with respect to the contract claim?

14 MR. SAVERI: I beg your pardon?

15 THE COURT: How far back am I giving you information
16 about contract -- fighter contracts?

17 MR. SAVERI: To 2000. And what -- and those aren't the
18 same numbers. And what I would say is --

19 THE COURT: Right, they have to produce 950 and you
20 have to produce six.

21 MR. SAVERI: Well, there may be more. And it's -- with
22 respect to the contracts themselves, it's -- we can go back to
23 2000 for those contracts.

24 THE COURT: Good. That's resolved. So now let's move
25 to the next category.

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1 MR. SAVERI: Yeah. So the next category is -- we've
2 talked about 3 and 6, I think.

3 THE COURT: Correct.

4 MR. SAVERI: And now we can talk about 14, which is the
5 document sufficient to show compensation. Now, again, Your
6 Honor, going back to the period before the beginning of the case
7 in particular that have to do with sources of income from
8 outside of their business --

9 THE COURT: Well, 14 requests compensation for combat
10 sports-related activity, not from all activity. So I understand
11 your argument in the other places --

12 MR. SAVERI: Okay.

13 THE COURT: -- about whether they ran a gym or they --

14 MR. SAVERI: Washed cars or were gardeners --

15 THE COURT: Correct. Different issue. And they're not
16 asking for all documents or all tax returns or all income.
17 They're asking for documents sufficient to show compensation for
18 combat sports-related activities dating back to 1-1-2000.

19 MR. SAVERI: And so, Your Honor, the reason why this is
20 beyond the permissible scope of discovery is because that --
21 information regarding other combat sports that are not the ones
22 that are particularly at -- the relationship with UFC here
23 doesn't have any --

24 THE COURT: Isn't your claim is that they are the only
25 game in town and that they have no choice but to be tied to

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1 their anchor?

2 MR. SAVERI: Well, that's pretty close. That's pretty
3 close, Your Honor. I mean, I certainly think --

4 THE COURT: So wouldn't information about their other
5 compensation in related fields be somewhat probative of that
6 claim?

7 MR. SAVERI: I think arguably it would be probative.
8 I'm not saying that it is completely irrelevant. I'm just
9 saying that under -- applying the Rule 26 standards that the
10 burden of going back in time to search e-mails --

11 THE COURT: And that's why I started by asking --
12 because they're not asking for -- they are not asking for
13 everything and all. They are asking, with respect to 14, for
14 documents sufficient to show compensation for combat
15 sports-related activity. And they're either going to have a
16 1099 or a W2 or some -- if they kept them. And if they don't
17 have them, that's easy. We have no responsive documents.

18 MR. SAVERI: And so, Your Honor, if we're talking about
19 things of the type that you identified, which are things that I
20 think you can reasonably expect even relatively unsophisticated
21 people to keep, that those materials to the extent they exist we
22 can look for and try to obtain or -- and produce, I mean. And
23 your 1099s, W2s, things of that --

24 THE COURT: Right, because they're not asking for
25 anything and all and I wouldn't give them that. But they are

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1 asking, you know, Did you make \$100,000 with the Kung Foo
2 Academy?

3 MR. SAVERI: Yeah, or somewhere else. The problem --
4 and the reason I'm pushing back on this is there could be e-mail
5 traffic that wouldn't necessarily take the form of the kind of
6 documents that are readily accessible that people keep, W2s,
7 1099s, things that are in -- you know, people just keep forever,
8 that are going to be a little bit harder to find and --

9 THE COURT: And I'm not expecting you to search for or
10 look for that because the request is narrowed to documents
11 sufficient to show.

12 MR. SAVERI: Okay.

13 THE COURT: Not everything that touches upon, not
14 everything that mentions, not every -- you know, I got \$10 for
15 signing an autograph, but the type of information that is
16 sufficient to show what income someone generated from a combat
17 sports-related activity.

18 MR. SAVERI: And so with that kind of limitation and
19 that understanding about the types of materials that we're
20 looking for, we can certainly do that and look for --

21 THE COURT: I think so. And that's why I'm -- you
22 know, that's going to be the order.

23 MR. SAVERI: And if -- we'll look, and if it doesn't
24 exist, I mean, that's going to be the answer. There are no
25 responsive documents. And we'll just -- that's fine, Your

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1 Honor.

2 THE COURT: All right. And then the last category are
3 documents sufficient to show your clients' position regarding
4 any tolling or extensions of contracts.

5 MR. SAVERI: Well, Your Honor, we don't think -- if
6 these are formal documents of the types we were talking about
7 before that -- like the contract themselves or addenda or those
8 sorts of things, those types of formal documents should be
9 relatively few or a limited number, we can identify and find
10 them and we'll pull them.

11 THE COURT: Right.

12 MR. SAVERI: But if there are other materials that have
13 to do with this, correspondence, going through e-mails, that's a
14 little bit more problematic.

15 THE COURT: Sure, it is, but you have the benefit of
16 talking to your clients, just like they're required to talk to
17 their clients to find out who has relevant information in this
18 case.

19 MR. SAVERI: Yes.

20 THE COURT: Did you ever ask the UFC to not require you
21 to fight this fight or do certain things or engage in promotion
22 for any period related to your health or for anything that had
23 the effect of extending your contractual obligation to them?

24 MR. SAVERI: And we can do that. And if there's
25 correspondence with the UFC about it, I mean, we can certainly

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1 look for and produce it.

2 THE COURT: Sure, and your clients can certainly assist
3 you in this process.

4 MR. SAVERI: Absolutely.

5 THE COURT: Because they know whether it exists or they
6 don't.

7 MR. SAVERI: Absolutely, Your Honor. We wouldn't
8 undertake this without consulting with our clients and not just
9 be poking around. We want to do this efficiently, and the place
10 to start are the knowledgeable people. So, I mean --

11 THE COURT: And so I'm trusting you to use a reasonable
12 methodology to respond to these requests dating back to
13 1-1-2000.

14 MR. SAVERI: Okay. Sure. Thank you, Your Honor.
15 We'll do that.

16 THE COURT: All right. That leaves us with item
17 No. 4 --

18 MR. COVE: Excuse me, Your Honor. I'm sorry. I know
19 that --

20 THE COURT: Mr. Cove, you're ahead on points on this
21 one. Do you want to...

22 MR. COVE: The last part of the colloquy there was an
23 example used of you can talk to UFC and say, Did you have an
24 agreement or did you get compensation from UFC? And Mr. Saveri
25 responded with regard to UFC. The question here regards all

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1 combat sports promoters, and I wanted to make sure the record
2 was clear on that.

3 MR. SAVERI: But -- and, Your Honor, just so we frame
4 this issue. That is a request for extensions to toll contracts
5 or extensions with entities other than the UFC? Is that what --

6 THE COURT: I don't have the request in front of me. I
7 presume you folks know what you are talking about.

8 MR. COVE: But I didn't think --

9 THE COURT: And neither side gave it to me.

10 MR. COVE: Yes.

11 MR. SAVERI: We're talking about 20, Your Honor?

12 THE COURT: Correct. The other one had to do with
13 compensation for combat sports activities -- combat
14 sports-related activity. So that wasn't limited to the UFC.

15 MR. SAVERI: And I understand that, Your Honor, and
16 let's just -- let's get on the same page. 20, let me just read
17 it verbatim, Documents sufficient to show any extensions to or
18 the tolling of the term of your agreements with any promoter,
19 including the duration and the reason for tolling or extension.
20 And just so we're clear, and I think Mr. Cove has fairly raised
21 the point, that this request calls for such extensions or
22 tolling of agreements with promoters other than the UFC.

23 THE COURT: Correct, on the same rationale that if it's
24 common in the industry, if something happens and a fighter can't
25 fight or has a problem or whatever and they asked to be relieved

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1 of their contractual obligations, did they do it with other
2 folks? Did they do it with the UFC?

3 MR. SAVERI: Your Honor, I think what we're -- and
4 we'll -- and maybe this is just the difference between the scope
5 of the discovery and what we're going to deal with at trial in
6 this matter, but we'll certainly argue that that evidence which
7 has to do with promoters that don't have anything to do with
8 this -- with the UFC, that's going to be irrelevant in the case.

9 THE COURT: I understand you're going to argue it's
10 inadmissible. I'm limiting it to promoters involved in combat
11 sports-related activities, not in any endeavor in which they've
12 engaged.

13 MR. SAVERI: Okay. Very well, Your Honor. Okay. And
14 we'll do the same search that we just talked about.

15 Thank you for the clarification, Your Honor.

16 THE COURT: Thank you, Mr. Cove.

17 All right. The next item is medical and drug test
18 records, whether plaintiffs should be required to produce
19 documents relating to the reasons for any tolling or extension
20 of their contracts, including suspensions for the use of
21 performance-enhancing drugs or extensions for injuries. So let
22 me hear first from Mr. Cove to find out precisely what it is
23 that he wants.

24 MR. COVE: Yes, Your Honor. Document Request 20, as
25 you know, includes documents sufficient to show any extension or

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1 tolling of the term of your agreements with any promoter,
2 including the duration and the reason for the tolling of the
3 extension.

4 Now, this is relevant because plaintiffs allege, first,
5 that Zuffa's tolling and extension provisions are inherently
6 anticompetitive, and they allege that Zuffa has manipulated them
7 to extend contracts indefinitely. So this is very limited
8 material that we've request here, and it's only documents
9 sufficient to show. It's not all documents. It's certainly not
10 all medical records. It's not everything relating to the
11 plaintiffs' drug suspensions --

12 THE COURT: You want to know if any time they've ever
13 been unable to work because of medical or drug test reasons
14 dating back to 2000 with any employer?

15 MR. COVE: Yes. Well, no, with any combat sports
16 promoter. Yes, that's what we would like.

17 They're necessary for us to show that the tolling
18 provisions that we have are normal in the industry, that they
19 have a limit business purpose. The law is --

20 THE COURT: You certainly have that information with
21 respect to any fighter that -- whose agreement was tolled or
22 extended who tested positive or who presented medical evidence
23 they were unable to fight. Now -- but you want it for prior
24 employers --

25 THE COURT: We want it for other -- and it's not just

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1 prior. Some of the plaintiffs we're talking about never fought
2 after they stopped fighting for the UFC. Some of them did,
3 Mr. Vera and Mr. Fitch, maybe others.

4 THE COURT: Right. So why can't you obtain the
5 information I want? What you are really talking about is
6 industry standards. Why aren't there less intrusive, more
7 reasonable means of obtaining that information from others who
8 are your competitors or engaged in your field?

9 MR. COVE: Well, these are the plaintiffs in the case,
10 and we have issued discovery to other promoters. Naturally,
11 they're --

12 THE COURT: Correct. So why do you need to embarrass
13 an individual plaintiff about whether or not he tested positive
14 for something that --

15 MR. COVE: Well, it's not a matter of embarrassment,
16 but if the plaintiff is alleging that these provisions are for
17 the purpose of impeding competition and those provisions have
18 been applied to him in circumstances that we believe are
19 legitimate, I think that's --

20 THE COURT: Cannot an entire industry be
21 anticompetitive?

22 MR. COVE: Pardon me?

23 THE COURT: A whole industry can be negligent. A whole
24 industry --

25 MR. COVE: It can't -- it's certainly conceivable that

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1 you could have anti -- you know, it's conceivable that --

2 THE COURT: Isn't that what Silicon Valley just got in
3 trouble for? Everybody creating --

4 MR. COVE: No, but that's a different -- that's a
5 different -- that is collusion. Those are people agreeing with
6 one another to do certain things, but what we have here, I think
7 the law is clear when a firm with no market power engages in a
8 contracting practice that's alleged to be anticompetitive when
9 somebody else agrees on it, that is relevant evidence as to
10 whether that contracting -- whether that contractual provision
11 has a legitimate business purpose because the small person's
12 doing it; clearly not doing it for the purpose of protecting or
13 extending market power, but doing it for some other reason which
14 presumably is going to be procompetitive.

15 It's not dispositive evidence that because A did it and
16 B did it that it's okay for B to do it, but it is certainly
17 relevant evidence that our expert would consider. And when the
18 plaintiffs who have made these allegations that these provisions
19 are anticompetitive, it's a subject we should be able to examine
20 them about and examine them about how these provisions work not
21 only with regard to their experience with the UFC, but with
22 regard to their experience with other promoters.

23 Why did another promoter extend or toll your provision?
24 Was that wrongful? Was it wrongful for you to still owe a
25 contract if you hadn't been able to complete, your client,

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1 because of a drug suspension or a medical issue? So that's
2 relevant.

3 Now, Zuffa does have some of this information with
4 regard to its fighters that it had a -- where it issued a formal
5 extension or tolling letter, which they often did. But they did
6 not -- sometimes there were circumstances where a plaintiff was
7 injured or received -- let's do this situation, one in which a
8 plaintiff was injured. Both sides sort of understood it, and no
9 formal -- there was no formal memorialization of the extension.

10 So there's extension letters, but then there's also
11 informal extensions that took place on the contract. And I want
12 to be able to show that this contract was not extended
13 arbitrarily, but it was extended because the person plaintiff
14 was not ready to fight because of an injury or whatever.

15 So that's one issue. And there also may be issues even
16 when a plaintiff is fighting for Zuffa where a commission takes
17 action after a fight, say the plaintiff was injured in the
18 fight, where the state athletic commission might issue a
19 suspension to the athlete and he may not communicate that or
20 Zuffa may not get word of it. And so there's not a complete
21 identity between the universe of information between Zuffa and
22 the employments.

23 So that's what we -- I think you understand why the
24 evidence is relevant. I won't belabor the point.

25 THE COURT: It's relevant, but the utility of the

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1 information weighed against the embarrassment and the personal
2 intrusion on the plaintiffs' medical history just doesn't
3 convince me that you're entitled to that information. You have
4 the ability to obtain the information about contract terms in
5 the industry from other sources. Your client has the bulk of
6 the information. You can certainly obtain information from an
7 athletic commission about whether anyone was suspended and so
8 forth. So I'm sustaining the plaintiffs' position on this one.

9 MR. COVE: May I ask for a clarification, Your Honor,
10 just to make sure I understand?

11 THE COURT: So long as it's not really another argument
12 guised as a clarification.

13 MR. COVE: No, it's a clarification.

14 Where we say -- so if they receive -- if a plaintiff --
15 let me just get the precise hypothetical. If a plaintiff
16 received an extension or tolling letter from another promoter,
17 they would still be obligated to provide that, but not the
18 underlying medical or drug suspension information. Is that what
19 I understand?

20 THE COURT: Correct. I've required them to give you
21 inform -- any documents that they have with respect to a request
22 for or receipt of any tolling or extension of a contract with
23 another promoter in a combat field, but I'm not requiring them
24 to produce the underlying medical evidence or medical bases for
25 that.

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1 MR. COVE: Understood. Thank you, Your Honor.

2 THE COURT: Yeah.

3 MR. SAVERI: Your Honor, we agreed with that last --

4 THE COURT: I thought you did, but that's why we just
5 had this discussion. So the last issue is with respect to a
6 proposed amendment to the protective order to include a
7 provision for attorneys'-eyes-only documents of a highly
8 personal nature from the files of athletes, and that again has
9 to do with medical issues and so forth.

10 You have agreed, if I understand correctly, to modify
11 it to accommodate the concerns of nonparty witnesses who -- from
12 whom you are requesting some discovery in this case, but you
13 disagree with respect to the necessity for attorneys'-eyes-only
14 treatment for information about other fighters from the contract
15 files.

16 MR. SAVERI: Your Honor, I think that's almost
17 completely true. Let me just try to focus that and touch on a
18 couple points. We have resolved the issue with respect to the
19 third parties, and we have done that with the consent of Zuffa,
20 I think. And I'm thankful for that.

21 I think the issue now is that when we were -- and I
22 wasn't here the last time, but there was litigation and a
23 dispute about whether Zuffa or any of the parties in the case
24 had the opportunity or the ability to designate materials as
25 attorneys' eyes only.

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1 THE COURT: Correct. And I found that Zuffa had not
2 met its burden of establishing the need for attorneys'-eyes-only
3 provisions. And now Zuffa is revisiting that with respect to a
4 smaller category of information that's described in paragraph
5 2.4 of their proposed amendment.

6 MR. SAVERI: Right. And what's kind of a head
7 scratcher to me, Your Honor, is that this is material that we
8 aren't asking for. We -- and we just had a dialogue about
9 whether the other kind of personal and private information
10 regarding the medical conditions of the class members is
11 relevant.

12 THE COURT: Right, but you're asking for the content of
13 all contract files of fighters. And some of those contract
14 files may contain information, such as we've been describing,
15 about medical or other personal reasons why fighters weren't
16 fighting or why their contracts were extended during certain
17 periods of time. And if I understand correctly, that is what
18 they are attempting to protect.

19 MR. SAVERI: And so, Your Honor, to the extent that
20 this material is going to be produced, we don't think we've
21 asked for it and it may be contained in these files. We
22 certainly want that -- we think that information is very
23 private, confidential to our fighters, and we want to have that
24 protected. I just want to make it very clear that we -- by
25 having this discussion, we're not agreeing that that medical --

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1 those medical records, I'm sorry, are relevant or probative of
2 anything and we haven't asked for them, but we certainly want
3 that material protected.

4 And I don't want anything about this to be taken to
5 indicate that we are agreeing that that's an issue that's
6 relevant or germane in the case. We haven't raised it.

7 THE COURT: Your clients understand that they were
8 bound by the terms of the protective order that's in place?

9 MR. SAVERI: Absolutely, Your Honor. And I hope the
10 same is true for Zuffa, so...

11 THE COURT: Mr. Williams?

12 MR. WILLIAMS: Yes, Your Honor. I think you get it.
13 With all due respect to Mr. Saveri, this is a bit of a head
14 scratcher for us because all we're seeking to do is exactly what
15 he just said at the end of his presentation.

16 THE COURT: Why doesn't the existing protective order
17 cover that? Because why is it entitled to the extra layer of
18 attorneys'-eyes-only protection when everybody is bound by a
19 protective order that limits the disclosure for any purpose that
20 is not legitimate to this litigation?

21 MR. WILLIAMS: Thank you, Your Honor. Fair question
22 and let me answer it.

23 They represent six named plaintiffs. There's a
24 potential punitive class out there of however many hundreds of
25 potential fighters. We're producing all of the fighter files.

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1 Some of those fighters are still active fighters. Some of those
2 fighters may be competing with one another, potentially.

3 Our position is is that one fighter -- setting aside
4 the six named plaintiffs, one member in the punitive class
5 shouldn't necessarily be permitted to see the medical records
6 depicting an injury of another fighter they may be competing
7 against.

8 So our position for having it to be attorneys' eyes
9 only is so that plaintiffs' counsel can see it and have the
10 information. Yet, it's not disseminated to the wider group of
11 potential parties out there. That's the reason for the higher
12 designation.

13 And --

14 THE COURT: So because the punitive class are
15 competitors with one another you're concerned that the six named
16 plaintiffs may use the information that's contained to the
17 competitive disadvantage of a punitive class member?

18 MR. WILLIAMS: Well, Your Honor, whether it's the six
19 or the other members of the punitive -- I presume other people
20 are going to be --

21 THE COURT: Right now we don't have an issue with
22 respect to -- of class.

23 MR. WILLIAMS: Right.

24 THE COURT: We have an issue with respect to six
25 individuals.

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1 MR. WILLIAMS: Right. But, Your Honor, the discovery
2 isn't going to be limited to just those six individuals. So to
3 the extent other people are deposed, I don't know how, you know,
4 portions of fighters' files are going to be used when
5 questioning other potential members in the class. And so this
6 really is to protect them, as we've tried to emphasize. It's
7 not -- we're not looking to revisit the issue with respect to
8 Zuffa's corporate files or those documents. And we're not even
9 looking to revisit it because we want to dump a bunch of medical
10 records into this case. What we're talking about --

11 THE COURT: You may have a contract extension document
12 that says: This will acknowledge we received your doctor's
13 reports indicating you have blank, blank, and blank --

14 MR. WILLIAMS: Bingo.

15 THE COURT: -- and, therefore, we're --

16 MR. WILLIAMS: Exactly. It is a very narrow category,
17 Your Honor.

18 THE COURT: As they explained the narrow category of
19 information they are seeking protection for, do you really have
20 a problem with that, given your -- both sides want to protect
21 the medical privacy of your punitive class?

22 MR. SAVERI: Well, Your Honor, we don't have -- we
23 don't plan to share this kind of information, spread it amongst
24 these different groups. We're perfectly content and we think
25 it's appropriate enough to share the information that we were

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1 just discussing. So we don't have a problem with that
2 provision. Frankly, Your Honor, we hope they don't produce it
3 to us and that we don't -- they don't create that problem.

4 THE COURT: Okay. But the problem is if it's contained
5 in a document, they either have to redact it and then give you a
6 privilege log or just give it to you with an
7 attorneys'-eyes-only provision.

8 MR. SAVERI: Your Honor, and there is -- look, my view
9 is whenever there's an issue that -- where the production calls
10 for confidential financial information or medical information,
11 it's always a challenge to deal with that in the discovery
12 context. And attorneys in these cases all the time have to
13 incur some additional cost to protect the -- to afford that
14 protection to the people whose interest would potentially be
15 violated by that disclosure.

16 It's not necessarily an answer to say, Well, look, the
17 protective order takes care of the problem. We'd encourage them
18 not to -- to produce that medical information. Frankly, if they
19 could redact it from the files, I think that would be a better
20 course of action. If they don't want to do that, we'll
21 certainly not -- and they'll give it to us and make it our
22 problem, we'll certainly not distribute that unnecessarily or
23 provide other people we represent with private information of
24 someone else. That's not the way we are going to conduct this
25 litigation.

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1 THE COURT: And I believe you, but I get a rotating
2 list of different people that are in here from time to time.
3 And I've already had problems with misunderstandings about what
4 you did or didn't agree to. So I'm going to allow them to have
5 attorneys'-eyes-only protection for that category of information
6 to eliminate the additional cost and expense of having to redact
7 relevant discoverable materials or portions of confidential
8 medical, but I do expect that any such designation will be very
9 circumspect.

10 MR. WILLIAMS: Yes, Your Honor.

11 MR. SAVERI: Thank you, Your Honor.

12 THE COURT: And, of course, you're going to have the
13 reciprocal opportunity yourself.

14 MR. SAVERI: Absolutely, Your Honor.

15 THE COURT: Okay. I'll see you back on February 23rd
16 at 1:45, unless folks have a problem or conflict with that date.
17 And then I'll hear from you, Mr. Cove.

18 MR. COVE: Your Honor, we had the additional
19 outstanding issue of RFPs No. 2 and 15 which related to non-MMA
20 compensation generally. I'm not sure if you ruled on that.

21 THE COURT: I did see that and I thought that was -- I
22 didn't specifically address that, but I am not going to require
23 the plaintiffs to produce non-MMA or non-combat sports-related
24 activity materials. I thought that was understood in the
25 limitations that I imposed with respect to the other categories.

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1 MR. COVE: Okay. So they would be all --

2 THE COURT: If they're related --

3 MR. COVE: -- combat sports.

4 THE COURT: Correct. And as they've indicated, if they
5 earn income because they're a well-known UFC fighter, and
6 they've agreed to produce those materials and they will, but
7 they're not going to produce everything about any -- you know,
8 whether they worked at some other unrelated entity or individual
9 or had an income or daddy left them a million dollars and they
10 manage an account and that type of thing.

11 MR. COVE: Understood, Your Honor.

12 THE COURT: All right. So they've agreed that if
13 they've generated income and, you know, people are buying their
14 DVDs or going to their workout video because they're a star in
15 the UFC, that's combat related and that is MMA-generated income.
16 But if it is completely unrelated, they don't have to give you
17 everything about every dime they've ever earned from whatever
18 source for the period of time you're asking.

19 MR. COVE: Understood, Your Honor. Thank you.

20 THE COURT: Yep.

21 MR. SAVERI: We agree, Your Honor. Thank you.

22 THE COURT: I thought you did. Okay. All right.

23 2-23 at 1:45 work for you, gentlemen and lady?

24 MR. COVE: Yes, Your Honor.

25 THE COURT: All right. We'll see you back then.

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1 Please file a joint status report the Friday before so that I
2 can be prepared to resolve your disputes as we go. Thank you,
3 counsel.

4 MR. DELL'ANGELO: Thank you, Your Honor.

5 MR. COVE: Thank you, Your Honor.

6 MR. SAVERI: Thank you, Your Honor.

7 (Whereupon the proceedings concluded at 3:30:35 p.m.)

8 --oOo--

9 I, Patricia L. Ganci, court-approved transcriber, certify
10 that the foregoing is a correct transcript transcribed from the
11 official electronic sound recording of the proceedings in the
12 above-entitled matter.

13

14 /s/ PATRICIA L. GANCI
15 Patricia L. Ganci

FEBRUARY 2, 2016
Date

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